

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PIT RIVER TRIBE, ET AL.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, ET
AL.,

Defendants.

No. 2:04-cv-00956 JAM-AC

**ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND THE JUDGMENT AND
AMENDED ORDER RE CROSS-MOTIONS
FOR SUMMARY JUDGMENT AND REMEDY**

Having considered Plaintiffs' Motion to Amend the Judgment (ECF No. 149), Defendants' opposition (ECF No. 152) and Plaintiffs' reply in support of their motion (ECF No. 153) and good cause appearing therefor, the Court hereby GRANTS the Motion to Amend and enters the following Amended Order re Cross-Motions for Summary Judgment and Remedy.

The parties cross-motions for summary judgment were heard on April 19, 2016. After considering the arguments of the parties, the Court issued an oral ruling from the bench granting summary judgment on Plaintiffs' First Cause of Action and ordering the parties to submit additional briefing on other matters taken under submission including the proper remedy. In its original

1 Order (ECF No. 144), this Court intentionally did not opine on
2 the applicability, meaning or interpretation of section 1005(c)
3 or 1005(g), 30 U.S.C. §§ 1005(c) and 1005(g). If, on remand, BLM
4 concludes that the Leases can lawfully be extended under these or
5 any other provision of the Geothermal Steam Act it must first
6 make such a finding and issue a new lease extension based on that
7 finding in accordance with this Amended Order.

8 The Court recognized that the 2005 Amendments to the
9 Geothermal Steam Act created a further issue as to whether the
10 Amendments should be applied retroactively and, if so, whether
11 BLM would be required to comply with NEPA and NHPA, including by
12 consulting with affected tribes. Upon reconsideration, the Court
13 finds that it erred in ordering that BLM shall apply the current
14 Geothermal Steam Act and its implementing regulations when
15 determining whether the Leases are eligible for or entitled to
16 extensions. The issue of retroactive application only becomes
17 ripe for decision by this Court after BLM has made a final
18 decision to extend the leases and produced a record of such
19 decision for this Court to review. The Court further finds that
20 the issue of the effective date of any lease extension or
21 continuation also is not ripe for decision until after BLM has
22 made a decision to extend or continue the Leases and stated its
23 reasons therefor.

24 The Court also finds upon reconsideration that it erred in
25 granting Defendants' motion for summary judgment on the Second,
26 Third and Fourth Causes of Action and that the record reflects
27 that the Court concluded that it did not need to reach these
28 claims given its decision on the First Cause of Action.

1 Accordingly, the Court hereby amends its previous Order Re
2 Cross-Motions for Summary Judgment and Remand (ECF No. 144) and
3 now enters the following orders:

4 1. The May 18, 1998 decision by the Bureau of Land
5 Management ("BLM") granting continuances of the 26 leases
6 ("Leases") committed to the Glass Mountain Geothermal Unit in the
7 Medicine Lake Highlands for up to 40 years pursuant to former
8 section 1005(a) of the Geothermal Steam Act, 30 U.S.C. § 1005(a),
9 is vacated and set aside. 5 U.S.C. § 706(2).

10 2. The decision of whether to extend or cancel the 26
11 Leases is remanded to the BLM. The May 18, 1998 decision
12 vacating prior extensions of 24 of the leases is also remanded to
13 the BLM for further consideration. To the extent that BLM
14 desires to reconsider extension of the Leases it must do so in
15 accordance with this Amended Order and Ninth Circuit's decision
16 in Pit River Tribe v. Bureau of Land Management, 793 F.3d 1147
17 (9th Cir. 2015).

18 3. If BLM elects to reconsider extension of the Leases,
19 BLM shall apply the Geothermal Steam Act and its implementing
20 regulations in effect on May 18, 1998 when determining whether
21 the Leases are eligible for or entitled to extensions.

22 4. If BLM elects to proceed with a new extension decision
23 for the Leases under other provisions of the Geothermal Steam
24 Act, the legal and factual basis for any such decision shall be
25 set forth in a new decision document, with timely notice to
26 Plaintiffs.

27 5. If BLM grants any lease extension or continuation on
28 remand and believes it is not required to prepare an

1 environmental impact statement under NEPA or to engage in tribal
2 consultation under the NHPA before granting such a lease
3 extension, it shall set forth the legal and factual basis for any
4 such belief in a new decision document with timely notice to
5 Plaintiffs.

6 6. Any judicial action challenging BLM's actions on remand
7 shall be commenced by filing a new complaint initiating a new
8 case.

9 7. The continuance of Lease CACA 12372 for up to forty
10 years pursuant to 30 U.S.C. § 1005(a) (AR 18832) is not affected
11 by this Amended Order.

12 8. Based on the Court's ruling on the First Cause of
13 Action, the Court Need Not and Does Not Reach Plaintiffs' motion
14 for summary judgment on the Second, Third and Fourth Causes of
15 Action, which are rendered moot by vacatur of the May 18, 1998
16 lease continuance decision.

17 9. Nothing in this Amended Order addresses or affects any
18 contractual claims and damages between Defendants Calpine
19 Corporation and BLM.

20 10. Defendants' motion to strike (Doc #132) the Declaration
21 of Deborah Sivas in Support of Plaintiffs' Motion for Summary
22 Judgment (Doc #131-1) is DENIED.

23 IT IS SO ORDERED.

24 Dated: January 27, 2017

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27 JOHN A. MENDEZ,
28 UNITED STATES DISTRICT JUDGE